

Remarks to the Greater Ketchikan Chamber of Commerce

January 7, 2004

By Dan Bockhorst, Local Boundary Commission Staff

Good afternoon. Thank you for inviting me to discuss the upcoming formal proposal to consolidate the City of Ketchikan and Ketchikan Gateway Borough.

The consolidation effort, which was initiated by the “Ketchikan – One Government Committee” of the Greater Ketchikan Chamber of Commerce, creates opportunities to make significant improvements to the framework of the area’s local governments. Potential benefits include:

- **Less expensive, more efficient local government.** The May 2000 Ketchikan consolidation proposal projected that, initially, 16 elected and appointed local government positions would be eliminated through consolidation at an annual savings of nearly \$1 million. The annual savings were anticipated to grow over time. Although always important, promoting maximum efficiency has become even more critical with the recent elimination of State revenue sharing, capital matching grants, and other State aid to local governments.
- **Less confusion over local government functions.** The prior consolidation proposal noted that citizens of Ketchikan are often perplexed and frustrated in sorting out which local government is responsible for what services. Two local governments serve nearly 60% of the residents of the Ketchikan Gateway Borough. As shown in Part I of the handouts, that is three and one-half times the average of all organized boroughs in Alaska. It is also noteworthy that the Ketchikan Gateway Borough is the only organized borough in southeast Alaska that is not unified or consolidated.
- **Elimination of conflicting laws and policies.** The 2000 consolidation effort noted that certain laws of the Ketchikan Gateway Borough and the City of Ketchikan, such as land-use regulations and building codes, are at odds with one another. Additionally, the prior proposal noted that each of the two governments promotes its own agenda, while “what benefits the community as a whole can sometimes be overlooked.”
- **Greater equity with regard to sharing of responsibilities for local government operations.** The City of Ketchikan has boundaries encompassing 5.6 square miles and 7,845 residents. However, it has responsibility for providing a number of services and facilities that benefit a region and population encompassing much more area and many more residents than represented by those figures (the Ketchikan Gateway Borough has 13,670 residents within the 1,754 square miles encompassed by its boundaries). A 1999 editorial in the Ketchikan Daily News stressed that inequities in terms of such responsibilities dictate “the

need to figure out a way to have one government, one mayor, one tax bill, one day soon.”

As attractive as those potential benefits seem, it is evident that many residents of the greater Ketchikan area – those living both inside and outside the City of Ketchikan – are doubtful and mistrustful about the prospect of combining local governments in Ketchikan. That is reflected in the fact that there have been four prior unsuccessful attempts to combine local governments in Ketchikan. A summary of those efforts follows:

- **1973 unification attempt.** In 1973, a local government unification effort was attempted.

Unification is different from consolidation in a number of material respects. Those distinctions are detailed in Part II of the handouts, but I will mention two of the more fundamental differences. First, unification requires that all city governments in the borough be combined with the borough into one government – consolidation does not impose that requirement.

Thus, the 1973 unification proposal would have combined the City of Ketchikan, City of Saxman, and the Ketchikan Gateway Borough. In contrast, the consolidation proposal to be developed soon will seek to combine only the City of Ketchikan and the Ketchikan Gateway Borough; the City of Saxman would be left in place.

A second fundamental distinction between unification and consolidation is that unification requires approval by multiple classes of voters. In the case of the Ketchikan unification, the classes were those living inside the City of Ketchikan as one class and those in the remainder of the borough as another class. In contrast, a single tally of all votes cast throughout the borough decides a local action consolidation proposal.

The 1973 unification proposal was endorsed by a majority of all votes cast and by 78% of the voters inside the City of Ketchikan. However, it failed when only 40% of the voters in the rest of the borough endorsed it.

- **1979 unification effort.** Six years after the first Ketchikan unification effort, a second attempt to unify the local governments was undertaken. That proposal was approved by 55% of the voters in the City of Ketchikan, but failed because only 22% of those in the remainder of the Borough endorsed it.
- **1986 unification attempt.** A third unification effort was undertaken in 1986. It was approved by 70% of the voters in the City of Ketchikan but only by 37% of the voters in the rest of the Borough. Overall, the

unification proposal was approved by 56% of the voters in the Borough, but still failed.

- **2001 consolidation proposal**. In 2001, voters throughout the Borough voted on a consolidation proposal. That proposal, like the proposal to be developed shortly, left the City of Saxman in place. It was defeated, however, when less than 42 percent of the voters cast ballots in support of the plan.

The ultimate success or failure of the upcoming consolidation effort will not be formally decided for perhaps two years or more. That is how long it will take for the Ketchikan Consolidation Commission to prepare the petition, the State Local Boundary Commission to act on the petition, and – assuming the petition is granted – the voters to vote on the proposal.

While the formal decision is a long way off, the fate of the effort may be settled in just six days. That, of course, is when voters throughout the Ketchikan Gateway Borough will elect a seven-member Ketchikan Consolidation Commission to develop a new consolidation proposal.

Three members of the Commission must reside within the City of Ketchikan, three must live within the remainder of the Borough and one will be elected at-large. Every voter throughout the Borough will have the opportunity to vote for candidates for all seven positions on the Commission.

Success of the consolidation effort will be enhanced if the elected commissioners:

- exercise political leadership wisely and without narrow partisanship;
- work openly in development of all aspects of the proposal;
- draw on the considerable expertise and skills of elected and appointed officials of the City of Ketchikan and the Ketchikan Gateway Borough;
- seek broad support for the proposal from voters throughout the borough, from the affected local governments, and from other interested organizations; and
- keep citizens fully informed of their efforts.

The elected commissioners will have approximately 8 and 1/2 months to complete their work. Specifics about the Ketchikan Consolidation Commission's assignment under the voter-approved initiative are outlined in Part III of the handouts. Critical decisions to be rendered by that commission are addressed in Part IV. Information regarding the required elements of a consolidation petition is outlined in Part V of the handouts.

Preparing a proper petition is a challenging task. The 2000 Ketchikan consolidation petition was comprised of more than 150 pages. A tremendous amount of time and effort was invested.

While the task of preparing a petition can be difficult, the Ketchikan Consolidation Commission need not start from scratch. The Commission should take advantage of the four prior efforts to combine the local governments. The Commission may find that relatively simple changes to the prior efforts may win greater favor with the voters.

That was the case in the most recent city/borough consolidation. In 1998, Haines voters rejected a consolidation proposal by a margin of 49.9% to 50.1%. Two years later, that same petition with two modifications was resubmitted. The changes altered the assembly apportionment plan and the name of the proposed consolidated borough government. When that proposal was presented to the voters in 2002, it was endorsed by a margin of 55.7% to 44.3%.

As long as the upcoming Ketchikan consolidation effort remains a credible one, the Alaska Department of Community and Economic Development will lend its technical resources to the effort. Those resources, however, are already thinly stretched.

Again, I urge that the future consolidation effort draw on the work that was done previously and on the expertise of elected and appointed officials of the City of Ketchikan and the Ketchikan Gateway Borough. I have worked with many of those individuals over the past several years and hold them in the highest regard.

The voter-approved initiative dictates that the Ketchikan Consolidation Commission conclude its work by September of this year. The Ketchikan Gateway Borough must then file the petition with the Local Boundary Commission no later than September 30 of this year. In doing so, the Borough will take on the formal role as a petitioner before the Local Boundary Commission. The duties and privileges of the Borough as petitioner are outlined in Part VI of the handouts.

The Ketchikan Gateway Borough is also contemplating a petition to the Local Boundary Commission for the annexation of 5,545 square miles. If that petition is filed, it will not interfere with the consolidation petition. A summary of the prospective annexation proposal is provided in Part VII of the handouts.

Once the consolidation petition is filed with the Local Boundary Commission, there will be an extensive opportunity for public review and comment. The Department of Community and Economic Development will evaluate the petition and make preliminary recommendations to the Local Boundary Commission. The public will have a chance to review and comment on the Department's

preliminary evaluation. After the Department considers public comments on its preliminary evaluation, it will issue a final evaluation and recommendation.

The Local Boundary Commission will then hold a public hearing on the matter in Ketchikan. If the Commission approves the petition, the Lieutenant Governor's Office will conduct an election to determine whether a majority of the voters favors consolidation. If they do, a second vote will be cast to elect a new assembly. Details about the Local Boundary Commission's process are provided in Part VIII of the handouts.

Other information about the prospective consolidation proposal is included in the handouts. That includes:

- Part IX – observations regarding the results of the July 17, 2001, Ketchikan consolidation election;
- Part X – observations regarding the results of the October 7, 2003, initiative to petition for consolidation; and
- Part XI – information about legislation pending before the State Legislature to modify procedures for consolidation.

In conclusion, the Greater Ketchikan Chamber of Commerce has long been an advocate of local government consolidation. Given that the upcoming proposal was formally initiated through the efforts of the Chamber, I strongly encourage the Chamber to remain interested and actively involved over the next eight and one-half months as the formal petition is developed. Ideally, that interest and involvement would carry forward as the matter is formally placed before the Local Boundary Commission.

That concludes my prepared remarks. I will do my best to answer questions concerning the matter.

PART I – BOROUGH CHARACTERISTICS (IN TERMS OF CITIES WITHIN THEM) & CONSTITUTIONAL PROVISIONS FAVORING CONSOLIDATION

Before Alaska became a state in 1959, there was no provision for regional (borough) government. Citizens depended on city governments for local services. When boroughs were first organized in the early- to mid-1960s, half of the residents of organized boroughs also lived within city governments. Largely through unification and consolidation of borough and city governments, that figure is only 17 percent today.

The following summarizes the current nature of the sixteen organized boroughs in Alaska in terms of city governments within those boroughs:

| NAME | TYPE | # OF CITIES | RESIDENTS WITHIN CITIES (2001 population data) |
|----------------------------------|---|-------------|---|
| Municipality of Anchorage | Home Rule Unified Borough | 0 | 0 |
| City and Borough of Juneau | Home Rule Unified Borough | 0 | 0 |
| City and Borough of Sitka | Home Rule Unified Borough | 0 | 0 |
| City and Borough of Yakutat | Home Rule Consolidated Borough | 0 | 0 |
| Haines Borough | Home Rule Consolidated Borough | 0 | 0 |
| Bristol Bay Borough | General Law Consolidated Borough | 0 | 0 |
| Matanuska-Susitna Borough | General Law Non-consolidated Borough | 3 | 18.9% |
| Denali Borough | Home Rule Non-consolidated Borough | 1 | 25.2% |
| Kenai Peninsula Borough | General Law Non-consolidated Borough | 6 | 36.6% |
| Fairbanks North Star Borough | General Law Non-consolidated Borough | 2 | 38.4% |
| Lake and Peninsula Borough | Home Rule Non-consolidated Borough | 6 | 48.4% |
| Kodiak Island Borough | General Law Non-consolidated Borough | 6 | 52.1% |
| Ketchikan Gateway Borough | General Law Non-consolidated Borough | 2 | 59.4% |
| North Slope Borough | Home Rule Non-consolidated Borough | 7 | 75.5% |
| Northwest Arctic Borough | Home Rule Non-consolidated Borough | 10 | 89.6% |
| Aleutians East Borough | General Law Non-consolidated Borough | 5 | 97.3% |

Article X, Section 1 of Alaska's Constitution states, in part, that, "The purpose of this article is to provide for maximum local self-government *with a minimum of local government units*, and to prevent duplication of tax-levying jurisdictions. (emphasis added)

The Committee on Local Government at the Constitutional Convention considered a borough with no city governments within it to be the ideal structure of municipal government in Alaska. The founders rejected a proposal for the *immediate* abolition of cities. However, the Committee anticipated that boroughs and cities within them would gradually evolve into single unit governments.

Conflicts between cities and boroughs in the 1960s led to the enactment of legislation in 1967 to authorize unification of local governments. Local government experts Jerome R. Saroff and Ronald C. Cease wrote the following concerning the constitutional provisions involving city/borough relationships as well as efforts in the late 1960s to enact legislation to allow unification of local governments:

During the Constitutional Convention when Alaskans were considering the structure and organization of local government, the Committee on Local Government pondered several alternatives. One of these was "Abolition of cities and their reconstitution as special urban tax districts within the larger unites (i.e., the borough)."¹

Though the committee seriously considered the possibility of a single unit of local government for urban areas, it rejected the idea as an immediate goal for

. . . it was the opinion of the Committee that while . . . (the abolition of cities) had very definite advantages of one completely unified government . . . it was too drastic a step to take at one point . . . to abolish these units altogether.²

As a practical solution, the committee proposed a dual system of local government – borough and city. Significantly, however, it "viewed the long-term relationships between the borough and the city as a gradual evolution to unified government."³ The committee hoped that there would be cooperation between the two units, and that "where functions overlapped, they would be integrated."⁴ It intended that those functions of government that could best be performed on an areawide basis would be handled by the larger unit, the borough. However, the relationship between boroughs and cities has been characterized more by conflict than by cooperation.

¹ (Footnote original) Minutes of the Committee on Local Government, No. 19.

² (Footnote original) John H. Rosswog, in Minutes, p. 2612.

³ (Footnote original) Final Report on Borough Government, p. 17.

⁴ (Footnote original) Minutes, p. 2625.

Conflict, in fact, has so often been the hallmark of the relationship that many people in the more urbanized parts of the State have begun to agitate for the unification of the two units. Accordingly, there is a recent interest in legislation which would bring about borough-city-integration, without waiting for the slow, gradual, and perhaps painful absorption of city functions by boroughs.

Late in 1965, the mayor of the City of Anchorage, who felt that the existence of two units of local government was wasteful and productive of needless conflict, discussed with various local leaders, including the Anchorage borough chairman, the desirability of merging or consolidating the city and borough.⁵ The reception was favorable.

A prominent member of the House of Representatives, Ted Stevens of Anchorage, working closely with city and borough officials, provided a draft of a bill designed to permit unification of city and borough. Before formally introducing the bill, he brought it to the House Local Government Committee for review and suggested changes. After some discussion and study, the bill was redrafted and introduced as House Bill No. 409. Mr. Stevens introduced the bill, which was cosponsored by John L. Rader (the original sponsor of the Mandatory Borough Act), the chairman of the House Local Government Committee from Kodiak, and a Juneau area legislator. The sponsorship indicated support from several major areas of the State. The news media gave House Bill No. 409 wide coverage. Editorial comment was almost uniformly favorable:

We believe local officials have taken a bold step in advancing the idea of a new form of local government. It demonstrates awareness of a problem too often ignored – the problem of conflicting boundaries, overlapping services and expensive conflicts of jurisdiction. . . . The proposal as it has been sketched could represent a pioneering form of local government that avoids mistakes made elsewhere.⁶

(Ronald C. Cease and Jerome R. Saroff, eds., *The Metropolitan Experiment in Alaska*, 1968, pp. 357 – 359.)

In 1971, Thomas Morehouse and Victor Fischer offered additional insights concerning the views of the Local Government Committee regarding the constitutional relationship between cities and boroughs.

Given the general direction and character of their thinking on boroughs, the Local Government Committee was faced with the question of what to do about existing and future cities. Consideration was given to the possibility of doing away with cities altogether, even though they were the only units of general local government then existing in Alaska.

⁵ (Footnote original) In this chapter “merger” and “consolidation” are used as they are colloquially, i.e., simply as catch-alls for unification. Actually, the two terms are not the same. “Merger” means dissolution of a municipality and its absorption by another municipality. “Consolidation” means dissolution of two or more municipalities and their incorporation as a new municipality.

⁶ (Footnote original) “What About the Merger?” *Anchorage Daily News*, February 14, 1966.

Abolition of cities and their reconstitution as urban service areas under the borough was considered as one way of promoting joint use of facilities and services and avoiding duplication of taxing jurisdictions. But other ways of achieving these objectives were also considered: extension of city boundaries to cover entire urban areas, and eventual unification or consolidation of borough and city governments. It was also recognized that cities had over the years developed distinct corporate identities and a substantial array of facilities and services; any sudden change from municipal status to uncertainty under the borough was not likely to be acceptable to city residents.⁷

It was decided that the status of cities should not be changed directly by the constitution; they would continue to exist. It was stipulated, however, that the city be a “part” of the borough in which it was located, and other provisions were made with the intent of encouraging cooperation between cities and boroughs. These included joint service of city councilmen on the legislative bodies of both the city and the borough,⁸ joint performance of functions, and voluntary transfer of functions from the city to the borough.

While designing an ideal model, delegates were not unaware of the potential for local government conflict. Indeed, the Alaska local political scene at the time was highlighted by disagreements between cities and school districts, battles over annexation, and troubles between cities and public utility districts.⁹ Delegates were also aware of interjurisdictional problems existing among cities, counties, and special districts in the larger urban areas of other states. They thus sought to create a system in which conflict would be minimized.

(Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, 1971, pp. 43-44.)

In 1971, the Alaska Supreme Court concluded that unification of local governments serves the minimum of local governments clause in Article X,

⁷ (Footnote original) *Minutes*, 14th, 15th, and 19th Meetings.

⁸ In 1972, Alaskans voted to amend Article X, § 4 to delete the requirement that “each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.” In a 1987 publication, Victor Fischer characterized the former constitutional provision as one that “caused constant friction between the two blocks representing city and non-city parts of most boroughs.” He noted further that the 1972 amendment “reduced dissention on borough assemblies and permitted them to deal more peacefully with areawide matters.” (Gerald A. McBeath and Thomas A. Morehouse, eds., *Alaska State Government and Politics*, 1987, p. 49.) DCED adds to Mr. Fischer’s insights that the repealed requirement for equal representation under the State and Federal constitutions also rendered the provision in Article X, § 4 impractical. For example, if the constitutional provision were in place today, the City of Seldovia (population 284) would be guaranteed at least one representative on the Kenai Peninsula Borough Assembly. The equal representation clauses of the State and Federal constitutions would then entitle the City of Homer (population 4,154) to fifteen representatives on the Assembly; while the Assembly for the whole Kenai Peninsula Borough (population 48,952) would have to be comprised of 172 members.

⁹ (Footnote original) See *Minutes*, 12th, 35th, and 40th Meetings, *Proceedings*, pp. 2637-38.

Section 1. The ruling stemmed from a challenge by the former home rule City of Douglas regarding the unification of local governments in the greater Juneau area. While “unification” is technically distinct from “consolidation”, both result in the reduction of the number of local governments. When the City of Juneau and the City of Douglas were abolished through unification in 1970, each was reconstituted as a separate urban service area with boundaries identical to the respective former cities.¹⁰ Therefore, the Court’s holding in that case that “unification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units” is relevant and applicable to consolidation as well. The Court stated in 1971:

Appellants further contend that unification is barred by an implied constitutional requirement that cities not be dissolved in favor of boroughs.¹¹ On this theory appellants challenge the constitutionality of AS 29.85.170, which provides that upon ratification of the unification charter, local government units within the unified area are dissolved. We think appellants’ challenge is for the most part disposed of by our discussion pertaining to the constitutionality of AS 29.85.160(c). *Unification is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units.* (emphasis added by DCED) Article X, section 2 merely authorizes but does not require the coexistence of cities and boroughs. In view of the express constitutional policy of minimizing the number of local government units, the grant to the legislature of the power to decide on the manner of dissolution of cities, found in article X, section 7, and the absence of either an explicit ban against unification, or a persuasive basis for inferring such a prohibition, we hold AS 29.85.170 constitutional.

City of Douglas v. City and Borough of Juneau, 484 P.2d 1040, 1044 (Alaska 1971).

¹⁰ Section 16.10 of the *Charter of the City and Borough of Juneau, Alaska* provides, “FUNCTIONS TO CONTINUE. Subject to Article XI of this Charter, service areas in existence on June 30, 1970, shall continue to exist. The area of the former cities of Douglas and Juneau shall each comprise a service area. The functions of local governments and service areas being exercised immediately prior to July 1, 1970, may continue insofar as consistent with this Charter, except that the assembly may alter, consolidate, or abolish service areas and may add or eliminate services as provided by this Charter.”

¹¹ (Footnote original) The Constitutional provisions from which appellants infer a bar against unification are art. X, §§ 1, 2, 4, 7, 9, and 13. These six sections provide, respectively, that (1) the purpose of the local government article is to “provide for maximum local self-government with a minimum of local government units”; (2) “all local government powers shall be vested in boroughs and cities”; (4) cities are to be represented on borough assemblies; (7) cities are to be incorporated, merged, consolidated, and dissolved as provided by law and shall be part of the boroughs in which they are located; (9) home rule charters may be repealed by the voters of the city or borough having the charter; (13) cities may transfer powers or functions to boroughs unless prohibited by law or charter and may revoke the transfers. Appellants’ argument is that these sections show that their draftsmen contemplated the continuation of cities within boroughs rather than the swallowing up of the former by the latter.

In 1991, at the request of the Alaska Municipal League, the State legislature established the Task Force on Governmental Roles to define optimum Federal, State, and local responsibilities in providing public services in Alaska. The Task Force was charged with three principal tasks, one of which was to review “the most efficient means of funding public services.” Governor’s Office of Management and Budget and the Alaska Municipal League, *Task Force of Governmental Roles – Final Report*, July 10, 1992, p. 5.

The Task Force concluded with regard to local governmental efficiencies that:

Another main organizational thrust embodied in the state constitution is to develop a streamlined system of local government. There are four available means of unification. The first is conventional unification. Juneau, Sitka and Anchorage chose to unify and Fairbanks and Ketchikan have both considered and rejected this approach. The second is a merger in which one or more municipalities merge into an existing municipality with the latter becoming the surviving municipality. The third is consolidation, where one or more municipalities consolidate into a new unit of government with all of the former units disappearing. This is the method that was looked at by the City of Kodiak and Kodiak Island Borough and is currently being explored by the Ketchikan Gateway Borough and the City of Ketchikan. The fourth method involves cities within a borough dissolving under the procedures set out in Title 29 whereby the borough succeeds to the responsibilities of the dissolved cities. This is currently being examined by the Northwest Arctic Borough. The Task Force endorses all of these methods.

- Unification of borough and city administrations should be encouraged wherever possible for more efficient and cost-effective service delivery.

(*Ibid.*, p. 15.)

Victor Fischer, former Constitutional Convention delegate and expert on Alaska local government, was retained by the Ketchikan Gateway Borough to review the 2000 Ketchikan consolidation proposal. Mr. Fischer concluded that the Ketchikan consolidation proposal met “the constitutional goal of maximizing self-government while *minimizing the number of government units*.” (emphasis added). Victor Fischer, *Preliminary Report on Municipal Consolidation Petition*, August 11, 2000, p. 3.

PART II –DISTINCTIONS BETWEEN CONSOLIDATION AND UNIFICATION

Definitions.

- Consolidation is the “dissolution of two or more municipalities and their incorporation as a new municipality.” (AS 29.71.800(6))
- Unification is the dissolution of a borough and all cities within that borough and the incorporation of a single home rule municipality. (AS 29.06.190(a))

Only Consolidation Allows the City of Saxman to Remain in Existence.

- The City of Ketchikan and the Ketchikan Gateway Borough would be combined into one municipal government through either consolidation or unification. Unification, however, would require that the City of Saxman be dissolved while consolidation allows the City of Saxman to remain in existence.

Only Consolidation Allows New City Governments to Be Formed.

- City governments cannot be formed within a unified borough. They can, however, be formed in a consolidated borough. If the Ketchikan Gateway Borough annexes the 5,545 square miles currently under consideration, that may be an important factor since the community of Hyder (which is within the territory being considered for annexation) has recently expressed interest in forming a city government.

Unification Requires the Successor Government to Be Home Rule; Consolidation Does Not.

Consolidation allows a choice among home rule, 1st class, or 2nd class boroughs. Unification allows only a home rule borough.

Local Action Consolidation Is Decided by a Majority Vote of all Residents; Unification Requires Approval by Different Classes of Voters.

To be allowed to both establish a unification commission and approve a unification proposition requires either

- a majority vote in each home rule and first class city in the borough and by a majority vote in the area of the borough outside of all home rule or first class cities; or
- at least 55 percent of all the voters voting on the question in home rule and first class cities combined and by a majority of the voters outside those cities.

There are Many Differences in the Procedures for Unification and Consolidation. The processes for consolidation and unification are not at all similar. Rather than summarizing the differences, State laws relating to

unification are presented below. Readers can compare those with the procedures for consolidation that are set out in Part VIII of the handouts.

STATE LAWS CONCERNING UNIFICATION OF MUNICIPALITIES

AS 29.06.190. Unification of municipalities authorized.

(a) A borough and all cities in the borough may unite to form a single unit of home rule government by complying with AS 29.06.190 - 29.06.410.

(b) An area that is not incorporated as a borough, including any cities in the area, may incorporate as a unified municipality under AS 29.05.031.

Sec. 29.06.200. Unification petition.

(a) Formation of a charter commission to prepare a unification charter shall be proposed by resolution of the assembly or by petition. The question of formation of a charter commission may be submitted to the voters not more often than once every 24 months.

(b) An assembly, a council, or a person living in the area proposed for unification may initiate a unification petition.

(c) In a general law borough, a unification petition shall be prepared by the borough clerk upon receipt of an application meeting the requirements of AS 29.26.110 , except that instead of containing an ordinance or resolution the application shall contain the question under AS 29.06.210 (a). The petition shall be prepared in accordance with AS 29.26.120 , except material required under (a)(1) and (2) of that section shall be replaced with the question under AS 29.06.210 (a). The signature requirements of AS 29.26.130 (a), (c), and (d) apply to a unification petition. The completed petition shall be submitted to the clerk who shall deliver it to the assembly with a report of the number of valid signatures determined by the clerk to be on the petition.

Sec. 29.06.210. Petition requirements.

(a) A unification petition shall read:

"PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER. We, the undersigned, qualified voters of the borough do hereby petition that the following proposition be placed before the voters as provided by law: "Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified municipality as authorized by law?"

(b) The petition shall be signed by at least

(1) the number of voters residing outside all home rule and first class cities in the borough equal to 25 percent of the votes cast in that area in the last regular borough election; and

(2) the number of voters residing in each home rule and first class city in the borough equal to 25 percent of the votes cast in each of these cities in the last regular borough election.

Sec. 29.06.220. Review of petition.

The assembly shall review a unification petition within 15 days to determine whether it complies with AS 29.06.210 . If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.06.230. Duties of charter commission.

The charter commission shall prepare, adopt, and submit to the voters for approval or rejection a proposed home rule charter for the area to be unified.

Sec. 29.06.240. Composition of charter commission.

The charter commission shall consist of 11 voters, three of whom are residents elected at large from the borough and eight of whom, proportionate to the population as determined by the department, are

- (1) residents of and elected from the area outside all home rule and first class cities in the borough; or,
- (2) residents of and elected from home rule or first class cities in the borough.

Sec. 29.06.250. Charter commission nominations.

(a) If the assembly determines that a unification petition meets the requirements of AS 29.06.210 , or the assembly by its resolution proposes an election on formation of a charter commission, the assembly shall issue a call for the nomination of commission candidates, specifying the filing deadline and the procedure for making nominations.

(b) Charter commission candidates shall be nominated by petition signed by at least 50 voters of the area from which the candidate seeks election, or by a number of voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(c) Nomination petitions shall be filed with the borough clerk at least 30 days after notice of the call for nominations has been given and on or before a date fixed by the assembly.

(d) If at least one nomination of a qualified charter commission candidate for each available seat is not filed, the unification petition or resolution to propose formation of a charter commission is void and an election on the question may not be held.

Sec. 29.06.260. Qualifications of candidates.

A person is eligible to be nominated as a candidate for the charter commission if that person is a voter of the area from which election is sought and has been a voter of the area for at least one year immediately preceding the date the nomination petition is filed.

Sec. 29.06.270. Election of charter commission.

(a) After receipt of a valid unification petition or adoption of an assembly resolution to propose formation of a charter commission, the assembly shall submit to the voters the question of whether a charter commission shall be formed to prepare a proposed unification charter. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the petition or adoption of the resolution. The ballot shall be worded exactly as in AS 29.06.210 (a).

(b) The election of charter commission members shall take place at the same time as the election on the question of formation of the commission.

(c) All costs incurred in conducting an election under AS 29.06.190 - 29.06.410 shall be paid by the borough.

Sec. 29.06.280. Requirements for approval of formation and election of charter commission.

(a) The votes on the question of formation of a charter commission shall be tabulated in separate classifications. If the question is approved by majority vote in each home rule and first class city in the borough and by a majority vote in the area of the borough outside of all home rule or first class cities, the question is approved. If the question is not approved by majority vote in each home rule and first class city, a favorable vote by at least 55 percent of all the voters voting on the question in home rule and first class cities and by a majority of the voters outside those cities constitutes approval of the question.

(b) If formation of a charter commission is approved, the candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.06.290. Charter commission organization and procedure.

(a) The charter commission shall hold its first meeting within 30 days after certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. A decision of the commission is not valid or binding unless approved by the number of members necessary to constitute a quorum.

(c) The charter commission may elect other officials from among its membership, adopt rules governing its procedures that are consistent with AS 29.06.190 - 29.06.410 and hire and discharge employees.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and made available for public inspection at the borough office.

Sec. 29.06.300. Vacancies.

(a) Vacancies on the charter commission shall be filled by a majority vote of the commission, except the assembly shall appoint members to fill vacancies if, after a proposed charter is rejected by the voters, more than one-half of the members resign.

(b) A person who fills a vacancy on the charter commission must be a voter of the same area as the person succeeded and must have been a voter of that area for at least one year immediately preceding the date the vacancy is filled.

Sec. 29.06.310. Per diem.

The assembly may grant a per diem allowance to members of the charter commission and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by AS 29.06.190 - 29.06.410. Costs, fees, and other expenses incurred by the commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.06.320. Charter provisions.

The charter must include

(1) provision for

(A) the adjustment of existing bonded indebtedness and other obligations in a manner that will assure a fair and equitable burden of taxation for debt service, subject to AS 29.06.380 ;

(B) the establishment of service areas;

(C) if election of members of the governing body is not areawide, the establishment of districts for the election of members of the governing body of the proposed unified municipality and procedures by which to reapportion the election districts;

(D) the reapportionment of districts if they are established;

(E) nonpartisan government, and the selection, organization, authority, and responsibilities of the governing body and its executive and administrator;

(F) the transfer or other disposition of property and other rights, claims, assets, and franchises of the municipalities to be unified under the charter;

(G) the exercise of the rights of initiative and referendum in accordance with AS 29.10.030 ;

(H) amending the charter in accordance with AS 29.10.100 ;

(2) the date on which the charter, if approved at the charter election, is effective;

(3) designation of the proposed unified municipality's official name; and

(4) other charter provisions that may be included in a home rule charter.

Sec. 29.06.330. Public hearings.

Both before and after drafting the proposed home rule charter, the charter commission shall hold a public hearing in each area represented on the assembly. Other public hearings may be held by the commission as it considers necessary.

Sec. 29.06.340. Filing of proposed charter.

Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy of the charter with signatures affixed shall also be filed with the clerk of each city in the borough.

Sec. 29.06.350. Publication and posting of proposed charter.

Within 10 days after filing the proposed home rule charter, the borough clerk shall have it published. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places in each city and each unincorporated community in the borough. Copies of the proposed charter shall be made available by the assembly to the public at both the office of the borough clerk and the office of the clerk of each city in the borough. The clerk shall have notice of the publication, posting, and availability of the proposed charter published.

Sec. 29.06.360. Election on charter.

(a) The proposed home rule charter adopted by the charter commission shall be submitted to the voters at a borough election held within 60 days of the date of publication and posting of the proposed charter. The borough clerk shall prepare the ballots for use in the election and shall give notice of the election by radio and television in a manner intended to apprise the entire borough population of the election. The election shall be conducted under procedures applicable to regular elections.

(b) A person who is a voter of the borough may vote in the election on the proposed charter.

(c) If the charter is approved by a majority of the votes in each home rule and first class city in the borough and the charter is approved by a majority of all the votes in the area of the borough outside all home rule or first class cities, the charter is ratified. If the charter is not approved by a majority of the votes in each home rule and first class city, the charter is ratified only if at least 55 percent of all the voters voting on the question in home rule and first class cities approve it and if a majority of the voters outside those cities approve it. If the charter is ratified, election results shall be certified to the commission and two copies of the charter shall be filed with

- (1) the lieutenant governor;
- (2) the department;
- (3) the district recorder for the area of the borough;
- (4) the clerk of the borough;
- (5) the clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt, and submit another proposed charter to the voters at a borough election held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

Sec. 29.06.370. Effect of the charter after ratification.

Upon ratification, the home rule charter of a unified municipality operates to dissolve all municipalities in the area unified in accordance with the charter

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PART III – OCTOBER 7, 2003, INITIATIVE ESTABLISHED FRAMEWORK FOR CONSOLIDATION PROPOSAL

Seven-member consolidation commission to be elected January 13, 2004.

- Three members must be residents of the City of Ketchikan elected by the voters throughout the Borough.
- Three members must be residents of the Borough outside the City of Ketchikan elected by the voters throughout the Borough.
- One member must be a resident of the Borough elected at-large by the voters throughout the Borough.

Consolidation Commission must prepare formal petition by September 2004 (within 8-½ months).

- The City of Ketchikan (a home rule city) and the Ketchikan Gateway Borough (a general law [second class] borough) would be dissolved.
- A new borough, the Municipality of Ketchikan (a home rule borough), would be incorporated.
- The City of Saxman would remain in existence within the new consolidated borough just as it is now part of the Ketchikan Gateway Borough.

Ketchikan Gateway Borough must serve as petitioner to the Local Boundary Commission (LBC).

- The initiative provision requiring the Borough to petition LBC facilitated the filing of the petition.*
- Borough must file petition with the LBC by September 30, 2004.

Borough must file petition as prepared by Consolidation Commission (i.e., Borough is prohibited from making changes).

*The Borough Assembly might have filed the petition voluntarily. Alternatively, other entities, individuals, or groups might have served as petitioner. These include local voters, a political subdivision of the state such as the City of Ketchikan, the Legislature, the Commissioner of the Alaska Department of Community and Economic Development, the staff of the Local Boundary Commission, a person designated by the Local Boundary Commission, a regional educational attendance area, or a coastal resource service area. If local voters had initiated the petition, signatures would have been required from a number of voters at least equal to 25 percent of the number who voted in the last regular municipal election. Based on the October 7, 2003, Borough election, 462 signatures from residents of the City of Ketchikan and 388 signatures from residents of the remainder of the Borough would have been required. Since only 437 Borough voters outside the City of Ketchikan voted in favor of consolidation at the July 17, 2001, election, it would likely have been difficult to obtain the necessary signatures from local voters (388 is 88.8 percent of 437).

PART IV – CRITICAL DECISIONS THAT WILL HAVE TO BE MADE IN THE COURSE OF DEVELOPING THE KETCHIKAN CONSOLIDATION PROPOSAL

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What restrictions and powers will be set out in the home rule charter for the proposed consolidated borough?

What goals will be stated as the reasons for consolidation?

How many assembly members will be proposed to govern the consolidated borough; how will they be apportioned; how will they be elected?

The 2000 consolidation petition proposed an Assembly of seven members and a mayor. All would have been elected at-large .

What service areas will be created, altered, or abolished and what services will be provided in each service area?

The 2000 consolidation petition proposed creation of

- a new 4.4 square-mile “Ketchikan Service Area” with boundaries encompassing the City of Ketchikan as they existed at the time the Petition was filed, a portion (approximately 0.51 square miles) of the Shoreline Service Area as it existed at the time the Petition was filed, 27.4 acres in Bear Valley approved for annexation to the City by the Local Boundary Commission on November 17, 2000, and a small parcel of land known as the “JONSEA tract” adjacent to the 27.4 acres recently approved for annexation;
- a new 0.41 square-mile Shoreline Service Area (the Shoreline Service Area existing at the time the Petition was filed was abolished following its annexation into the City of Ketchikan on January 1, 2001);
- the Greater Ketchikan EMS Service Area encompassing the Ketchikan Service Area; the Shoreline Service Area; South Tongass Volunteer Fire Department Service Area; the City of Saxman; Section 25 and a portion of Section 36 of T75S, R91E; CRM; and Section 8 and portions of Sections 17, 18, 19, and 30 of T75S, R92E, CRM;

What services would be exercised by the Municipality of Ketchikan on an areawide basis?

The 2000 consolidation petition proposed that the following services would be provided on an areawide basis:

- Education;
- Assessment and Collection of Property, Sales and Transient Occupancy Taxes;
- Platting, Planning, and Land Use Regulation;
- Parks and Recreation;
- Transportation;
- Animal Control;
- Economic Development;
- Emergency 911 Dispatch;
- Library;
- Museum;
- Civic Center;
- Mental Health and Substance Abuse;
- Hospital;
- Public Health;
- Cemetery;
- Solid Waste Disposal; and
- Port and Harbors.

What services would be exercised by the Municipality of Ketchikan on a nonareawide basis?

The 2000 consolidation petition proposed that the following services would be provided on a nonareawide basis (i.e., in the area of the consolidated Borough outside the City of Saxman:

- Wastewater Collection, Treatment, and Discharge; and
- Building-Code Enforcement.

What taxes will be proposed?**What provisions will be made for allocation of assets and liabilities and other transition measures?**

PART V –ELEMENTS REQUIRED FOR THE CONSOLIDATION PETITION

The LBC staff will provide petition forms. The forms will require the following information:

1. The name of the petitioner.
2. The name and class of the two municipal governments proposed to be dissolved and the one municipal government proposed to be incorporated.
3. A general description of the nature of the proposed consolidation.
4. A general description of the area proposed for consolidation.
5. A statement of reasons for the consolidation petition.
6. Legal descriptions and maps showing the boundaries of (a) the existing City of Ketchikan, (b) the existing Ketchikan Gateway Borough and the proposed Municipality of Ketchikan, and (c) any existing or planned borough service area proposed to be established, altered, or abolished through consolidation. Current indications are that the Ketchikan Gateway Borough plans to petition the Local Boundary Commission in early 2004 for annexation of 5,545 square miles including Hyder and Meyers Chuck. If the annexation petition is filed prior to the consolidation petition, a legal description and map of the area proposed for annexation and the proposed expanded boundaries of the Borough should also be included.
7. The size of (a) the existing City of Ketchikan, (b) the existing Ketchikan Gateway Borough and the proposed Municipality of Ketchikan, and (c) any existing or planned borough service area proposed to be established, altered, or abolished through consolidation. If the previously noted annexation petition is filed, the size of the proposed expanded boundaries of the Borough should also be stated.
8. The physical address, mailing address, telephone number, facsimile number, and electronic mail address of the petitioner's representative.
9. Data estimating the population of (a) the existing City of Ketchikan, (b) the existing Ketchikan Gateway Borough and the proposed Municipality of Ketchikan, and (c) any existing or planned borough service area proposed to be established, altered, or abolished through consolidation. If the previously noted annexation

petition is filed, the population of the area proposed for annexation should also be stated.

10. Information relating to public notice and service of the petition.

11. The assessed or estimated value of taxable property in (a) the existing City of Ketchikan, (b) the existing Ketchikan Gateway Borough and the proposed Municipality of Ketchikan, and (c) any existing or planned borough service area proposed to be established, altered, or abolished through consolidation. If the previously noted annexation petition is filed, the assessed or estimated value of taxable property in the area proposed for annexation should also be stated.

12. Projected taxable sales in (a) the existing City of Ketchikan, (b) the existing Ketchikan Gateway Borough and the proposed Municipality of Ketchikan, and (c) any existing or planned borough service area in which sales taxes would be levied on a service area basis. If the previously noted annexation petition is filed, projected taxable sales in the area proposed for annexation should also be stated.

13. Each municipal government tax levy currently in effect in (a) the existing City of Ketchikan, (b) the existing Ketchikan Gateway Borough and the proposed Municipality of Ketchikan, and (c) any existing or planned borough service area proposed to be established, altered, or abolished through consolidation.

14. A three-year projection of revenue, operating expenditures, and capital expenditures the proposed Municipality of Ketchikan.

15. Information about existing long-term municipal debt of (a) the existing City of Ketchikan and (b) the existing Ketchikan Gateway Borough.

16. Information about the powers and functions of (a) the existing City of Ketchikan, (b) the existing Ketchikan Gateway Borough and (c) the proposed Municipality of Ketchikan. The information about the powers and functions of the existing Ketchikan Gateway Borough and the proposed Municipality of Ketchikan must include, for each, a listing of powers and functions exercised or proposed to be exercised on (a) an areawide basis (i.e., throughout the borough), (b) a non-areawide powers (i.e., in the area of the borough outside city governments), and (c) a service area basis in service areas proposed to be established, altered, or abolished through consolidation.

17. The transition plan required under 3 AAC 110.900. The transition plan must include

(a) a practical plan that demonstrates the capacity of the proposed consolidated borough to provide essential services in the shortest practicable time after the effective date of consolidation;

(b) a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by the municipalities proposed for consolidation (the plan must be prepared in consultation with the officials of each existing municipality proposed to be consolidated, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of consolidation);

(c) a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing municipality proposed for consolidation (the plan must be prepared in consultation with the officials of each municipality proposed for consolidation and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the consolidation; the plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities).

18. Information about the composition and apportionment of the governing body of (a) the existing City of Ketchikan, (b) the existing Ketchikan Gateway Borough and (c) the proposed Municipality of Ketchikan.

19. Information regarding any effects of the proposed change upon civil and political rights for purposes of 42 U.S.C. §§ 1971 - 1974 (Voting Rights Act of 1965).

20. A supporting brief that provides a detailed explanation of how the proposal satisfies each constitutional, statutory, and regulatory standard that is relevant to the proposed consolidation;

21. Documentation demonstrating that the petitioner is authorized to file the petition;

22. The proposed home rule charter;

23. An affidavit from the petitioner's representative that, to the best of the representative's knowledge, information, and belief, formed after reasonable inquiry, the information in the petition is true and accurate.

PART VI – DUTIES AND PRIVILEGES OF THE KETCHIKAN GATEWAY BOROUGH AS PETITIONER

Submit Petition for Technical Review (3 AAC 110.420)

The petitioner must provide the Alaska Department of Community and Economic Development (DCED) with the original petition and supporting materials and a copy in an electronic format. The requirement to provide a copy in electronic format may be waived by the DCED if the petitioner lacks a readily accessible means or the capability to provide the copy in electronic format.

Provide Necessary Supplemental Information (3 AAC 110.440)

If requested by the DCED, the petitioner must supply any supplemental information and documents that are reasonably necessary to complete the technical review of the form and content of the petition. (3 AAC 110.440(b))

If the petition or supporting materials are deficient in form or content, with the concurrence of the Chair of the Local Boundary Commission, the DCED will return the defective petition or supporting materials to the petitioner for correction or completion

Provide Public Notice of the Filing of the Petition (3 AAC 110.450)

Within 45 days after receipt of the DCED's written notice of acceptance of the petition for filing, the petitioner must

- (1) Publish public notice prepared by the DCED of the filing of the petition in a display ad format of no less than six inches long by two columns wide at least once each week for three consecutive weeks in one or more newspapers of general circulation designated by the DCED.
- (2) Post public notice of the filing of the petition in at least three prominent locations readily accessible to the public within the area proposed for consolidation and in other locations designated by the DCED.
- (3) Hand-deliver or mail, postage prepaid, public notice of the filing of the petition, correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the DCED.

(4) Submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving the area of the proposed change and request that it be announced for the following 14 days. All published and posted notices of filing of a petition must identify the specific location of the petition documents, and the hours when the documents can be reviewed by the public.

The petitioner must ensure that notices remain posted through the deadline for filing of responsive briefs.

Serve the Petition (3 AAC 110.460)

Within 25 days after receipt of the notice from the DCED of acceptance of the petition for filing, the petitioner must hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the area proposed for consolidation, and to other interested persons and entities designated by the DCED. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

From the first date of publication of notice of the filing of the petition through the last date on which the petition may be subject to action by the Commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction, the petitioner must make a full set of petition documents, including public notices, responsive briefs, the reply brief, and DCED reports, available for review by the public at a central and convenient location such as a municipal office or public library. The petition documents must be available for review during normal working hours, and the petitioner must accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days.

Provide Proof of Notice and Service (3 AAC 110.470)

Within 50 days after receipt of the DCED's written notice of acceptance of the petition for filing, the petitioner must deliver to the DCED five additional complete sets of petition documents and an affidavit that the notice, posting, service, deposit, and publishing requirements have been satisfied. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

Receive Responsive Briefs and Comments (3 AAC 110.480)

Any interested person or entity with the capacity to sue and be sued may file with the DCED an original and five complete copies of a responsive brief containing

facts and analyses favorable or adverse to the petition. The person or entity filing a responsive brief participates as a respondent to a petition.

Additionally an interested person or entity may file with the DCED written comments supporting or opposing the petition.

Respondents must serve two copies of their brief on the petitioner by regular mail, postage prepaid, or by hand-delivery.

The DCED must provide a copy of the written comments to the petitioner by hand-delivery, electronic mail, facsimile, or postage-prepaid mail.

Submit Reply Brief (3 AAC 110.490)

The petitioner may file an original and five copies of a single reply brief in response to all timely responsive briefs and written comments within the time constraints set by the LBC. The petitioner must provide the DCED with a copy of the reply brief in an electronic format, unless the DCED waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. The reply brief must be accompanied by an affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery.

Conduct Informational Sessions (3 AAC 110.510)

If the DCED determines that persons or entities in the area proposed for consolidation have not had adequate opportunity to be informed about the scope, benefits and detriments of the proposed consolidation, the DCED will require the petitioner to conduct informational sessions, and to submit a recording, transcription, or summary of those sessions to the DCED.

Provide Public Notice of any DCED Informational Meeting (3 AAC 110.520)

During its investigation and analysis of a consolidation petition, the DCED may convene at least one public meeting in or near the territory proposed for change. The petitioner must post notice of the meeting in at least three prominent locations readily accessible to the public in or near the territory proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner must submit to the DCED an affidavit certifying that the posting have been met.

Service of and Comment on DCED's Preliminary Report (3 AAC 110.530)

The DCED must mail to the petitioner the DCED preliminary report with recommendations regarding the consolidation proposal. Within 24 hours after receipt of the preliminary report with recommendations, the petitioner must place a copy of the report with the petition documents available for review.

The petitioner may submit to the DCED timely written comments pertaining directly to the preliminary report with recommendations

Amendment or Withdrawal of the Petition (3 AAC 110.540)

Ordinarily, a petitioner is permitted to amend or withdraw a petition at any time before the first mailing, publishing, or posting of notice of the LBC's hearing on the petition. In this instance, however, the initiative expressly requires the Borough to submit the petition as prepared by the Consolidation Commission. Any attempt by the Borough to amend or withdraw the petition would seem to be irreconcilable with the provisions of the initiative approved by voters on October 7, 2003.

Provide Public Notice of the LBC Hearing; Provide Witness List (3 AAC 110.550)

The petitioner must post notice of the LBC's hearing on the petition in at least three prominent locations readily accessible to the public in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

At least 14 days before the hearing, the petitioner must submit to the DCED a list of witnesses that it intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits its witness list to the department, the petitioner must provide a copy of its witness list to each respondent by hand-delivery or postage-prepaid mail.

Participation at the LBC Hearing (3 AAC 110.560)

The petitioner may make an opening statement to the Commission not to exceed 10 minutes. The petitioner may present sworn testimony of witnesses with expertise in matters relevant to the proposed consolidation. Following sworn testimony of witnesses called by respondents, the petitioner may provide sworn responsive testimony. Following a period of public comment, the petitioner may

provide a closing statement not to exceed 10 minutes. Following closing statements by respondents, the petitioner may provide a reply not to exceed five minutes.

Opportunity to Seek Reconsideration or to File a Responsive Brief if Reconsideration Is Granted (3 AAC 110.580)

Within 90 days of its hearing, the LBC must render a decision. The Commission may approve the petition as presented, amend the petition, impose conditions on the original or amended petition, or deny the petition. Within 30 days of its decision, the LBC must adopt a written decisional statement explaining the basis for its decision.

Within 18 days after the LBC issues its written statement of decision, the petitioner or any other person or entity may file an original and five copies of a request for reconsideration of all or part of that decision, describing in detail the facts and analyses that support the request for reconsideration. The LBC may also order reconsideration on its own motion.

If the LBC grants a request for reconsideration or orders it on its own motion, the petitioner may file a responsive brief within 10 days. The petitioner must provide the DCED with a copy of the responsive brief in an electronic format, unless the DCED waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format.

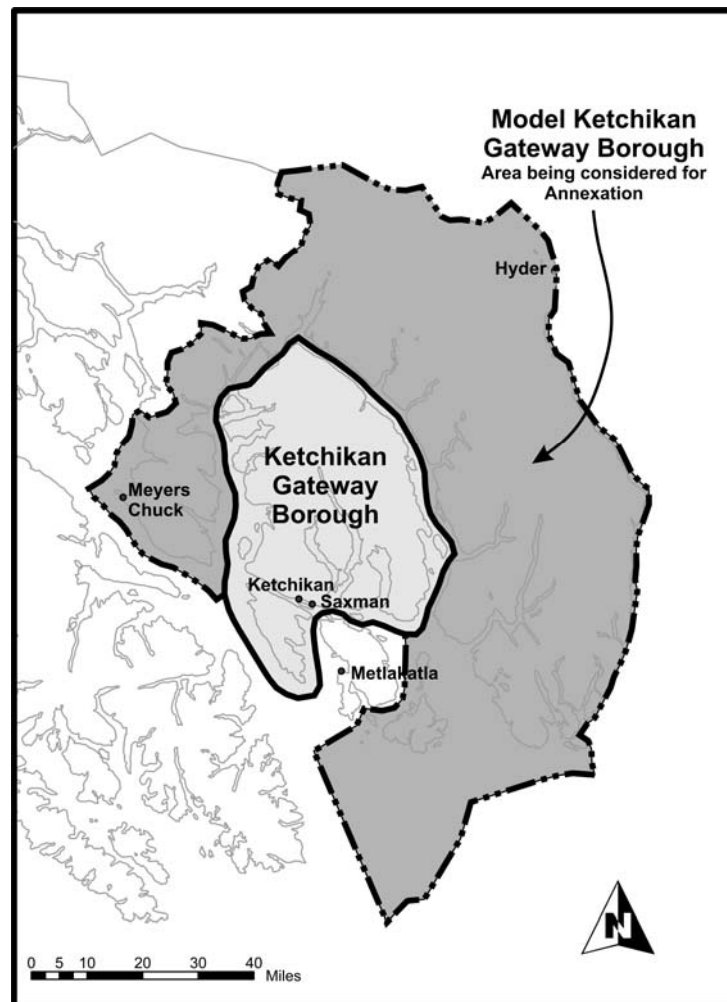
Seek Judicial Review (3 AAC 110.620)

A final decision of the LBC may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62) by the petitioner or other persons or entities with standing

PART VII – X SUMMARY OF PROSPECTIVE BOROUGH ANNEXATION PROPOSAL

On October 6, 2003, the Ketchikan Gateway Borough Assembly authorized, by a vote of 4-3, a petition to the Local Boundary Commission for annexation of all territory within the Ketchikan Gateway Borough's model boundaries not already within the existing corporate boundaries of the Borough. Borough officials indicate that the petition is currently under development.

The area proposed for annexation comprises an estimated 5,545 square miles, including Hyder and Meyers Chuck. A map of that area and the existing boundaries of the Borough is presented below.



PART VIII – PROCEEDINGS TO DATE AND FUTURE PROCEEDINGS

PART VIII-A – Proceedings to date

May 2003 – the Ketchikan – One Government Committee developed an initiative proposal to establish the Ketchikan Consolidation Commission.

May 23, 2003 – Ketchikan – One Government Committee members submitted a formal application for an initiative petition to the Borough Clerk.

June 2, 2003 – the Borough Clerk certified the application for the initiative petition as meeting the requirements of State law.

June 5, 2003 – the Borough Clerk prepared the initiative petitions and provided them to sponsors.

August 13, 2003 – sponsors of the initiative gathered nearly 900 signatures (598 valid signatures were required for certification). The initiative petition was submitted to the Borough Clerk.

August 14, 2003 – the Ketchikan Gateway Borough Clerk certified the initiative petition. The proposed initiative was scheduled to be placed on the October 7, 2003 ballot.

October 7, 2003 – voters in the Ketchikan Gateway Borough approved the initiative by a vote of 1,796 to 1,498 (54.5% to 45.5%)

November 2003 – 21 individuals qualified by the deadline as candidates for the Ketchikan Consolidation Commission. Eleven individuals qualified for the three seats representing the area within the City of Ketchikan, eight individuals qualified as candidates for the three seats outside the City of Ketchikan, and two candidates will vie for the one at-large seat.

SAMPLE BALLOT FRONT
INSTRUCTIONS TO VOTER: To vote for the issue/candidate of your choice, fill in the oval to the right of the issue/candidate you want to vote for. Place your ballot inside the secrecy sleeve. Take your ballot to the ballot box.
If you make a mistake while voting, return the ballot to the election official for a new one. A vote which has been erased or changed will not be counted.

OFFICIAL BALLOT
KETCHIKAN GATEWAY BOROUGH
CHARTER COMMISSION SPECIAL ELECTION
TUESDAY, JANUARY 13, 2004

Completely fill in the oval opposite the name of each candidate for which you wish to vote.

| COMMISSION MEMBER BOROUGH RESIDENT RESIDING OUTSIDE THE CITY OF KETCHIKAN Vote for no more than three (3) | COMMISSION MEMBER BOROUGH RESIDENT RESIDING INSIDE THE CITY OF KETCHIKAN Vote for no more than three (3) |
|--|---|
| WATSON, David J. | LANIER, Robert E. |
| WHEELER, Robert G. | PARSONS, Mike |
| WARRINGTON, John A. | REYNOLDS, Eric |
| WILKINSON, Robert | STANTON, James R. |
| WILSON, Robert W. | OTTE, Deborah |
| WILSON, Jim | CARROLL, Susan J.E. |
| WILSON, Michael | MC CARTHY, Dennis |
| WILSON, Mike | MURPHY, Kevin |
| WILSON, Mike | JACKSON, Jeff R. |
| WILSON, Mike | ALBERTSON, David |
| WILSON, Mike | MILLER, A. Paul |
| WILSON, Mike | WILSON, Mike |
| WILSON, Mike | WILSON, Mike |

COMMISSION MEMBER
BOROUGH RESIDENT AT-LARGE
Vote for no more than one (1)

| |
|----------------|
| WILLIAMS, Jim |
| THOMPSON, Gary |
| WILSON, Mike |

Part VIII-B Proceedings of the Local Boundary Commission

440. Technical review of petition.

450. Notice of petition.

460. Service of petition.

470. Proof of notice and service.

- 480. Responsive briefs and written comments.
- 490. Reply brief.
- 500. Limitations on advocacy.
- 510. Informational sessions.
- 520. Departmental public meetings.
- 530. Departmental report.
- 540. Amendments and withdrawal.
- 550. Commission public hearing.
- 560. Commission hearing procedures.
- 570. Decisional meeting.
- 580. Reconsideration.
- 590. Certain local action annexations.
- 600. Local action/local option elections.
- 610. Legislative review.
- 620. Judicial review.
- 630. Effective date and certification.
- 640. Scheduling.
- 650. Resubmittals and reversals.
- 660. Purpose of procedural regulations; relaxation or suspension of procedural regulation.

3 AAC 110.440. Technical review of petition

(a) The department shall review the petition and supporting materials to determine whether they include a budget sufficient for commission review, a transition plan sufficient for commission review, and other required information. When applicable, the department shall also determine whether the petition contains the legally required number of valid signatures. The department shall complete the technical review of the petition within 45 days after receiving it, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review.

(b) The petitioner is primarily responsible for supplying all supplemental information and documents reasonably necessary for the technical review process, including information identifying who is registered to vote, who resides in a territory, and the number of persons who voted in the territory during the last election.

(c) If it determines that the petition or supporting materials are deficient in form or content, the department shall consult with the chair of the commission. With the concurrence of the chair of the commission, the department shall return the defective petition or supporting materials to the petitioner for correction or completion. With the concurrence of the chair of the commission, the department shall determine whether the deficiencies in the petition are significant enough to require new authorization for the filing of the corrected or completed petition. The department shall complete the technical review of any corrections or materials needed to complete the petition within 30 days after receiving them, except that the chair of the commission, for good cause, may grant the department additional time to complete its technical review. If the department determines that the petition and brief are in substantial compliance with applicable provisions of AS 29.04, AS 29.05, AS 29.06, and this chapter, the department shall notify the petitioner that the petition and brief have been accepted for filing, and the department shall file the petition.

(d) The petitioner may appeal to the commission a determination by the department under (c) of this section that a petition is deficient in form and content or that new authorization will be required for the filing of a corrected or completed petition.

3 AAC 110.450. Notice of petition

(a) No later than 45 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall

(1) publish public notice of the filing of the petition in a display ad format of no less than six inches long by two columns wide at least once each week for three consecutive weeks in one or more newspapers of general circulation designated by the department; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall require the petitioner to provide notice through other means designed to reach the public;

(2) post public notice of the filing of the petition in

(A) at least three prominent locations readily accessible to the public and in or near the territory proposed for change; and

(B) other locations designated by the department;

(3) ensure that notices posted under (2) of this subsection remain posted through the deadline set under 3 AAC 110.640 by the chair of the commission for the filing of responsive briefs;

(4) hand-deliver or mail, postage prepaid, public notice of the filing of the petition, correctly addressed to the municipalities having jurisdictional boundaries within an area extending up to 20 miles beyond the boundaries of the territory proposed for change, and to other persons and entities designated by the department; and

(5) submit a request for a public service announcement of the filing of the petition to at least one radio or television station serving the area of the proposed change and request that it be announced for the following 14 days.

(b) The department shall specify the text of the public notices required in (a)(1) - (a)(4) of this section, to ensure that the notices contain the following information:

(1) the title of the notice of the filing of the petition;

(2) the name of the petitioner;

(3) a description of the proposed action;

(4) a statement of the size and general location of the territory proposed for change;

(5) a map of the territory proposed for change, or information where a map of the territory is available for public review;

(6) a reference to the constitutional, statutory, and regulatory standards applicable to the commission's decision;

(7) a reference to the statutes and regulations applicable to procedures for consideration of the petition;

(8) designation of where and when the petition is available for public review;

(9) a statement that responsive briefs and comments regarding the petition may be filed with the commission;

(10) a reference to the regulations applicable to the filing of responsive briefs,

(11) the deadline for receipt of responsive briefs and comments;

(12) the mailing address, facsimile number, and electronic mail address for the submission of responsive briefs and comments to the department;

(13) a telephone number for inquiries to the commission staff.

(c) The department shall specify the text of the public service announcement required in (a)(5) of this section, to ensure that the announcement contains the following information:

(1) the title of the public service announcement;

(2) the period during which the public service announcement is requested to be broadcast;

(3) the name of the petitioner;

(4) a description of the proposed action;

(5) a statement of the size and general location of the territory proposed for change;

(6) a statement of where and when the petition is available for public review;

(7) a statement that responsive briefs and comments regarding the petition may be filed with the commission;

(8) a statement of the deadline for responsive briefs and comments;

- (9) a statement of where the complete notice of the filing may be reviewed;
- (10) a telephone number for inquiries to the petitioner.

3 AAC 110.460. Service of petition

(a) No later than 25 days after receipt of the department's notice of acceptance of the petition for filing, the petitioner shall hand-deliver or mail, postage prepaid, one complete set of petition documents to every municipality within an area extending 20 miles beyond the boundaries of the territory proposed for change, and to other interested persons and entities designated by the department. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

(b) From the first date of publication of notice of the filing of the petition under 3 AAC 110.450(a) (1), through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction, the petitioner shall make a full set of petition documents, including public notices, responsive briefs, the reply brief, and department reports, available for review by the public at a central and convenient location such as a municipal office or public library. The petition documents must be available for review during normal working hours, and the petitioner shall accommodate specific requests for public review of the petition documents at reasonable times in the evening and on weekend days. All published and posted notices of filing of a petition must identify the specific location of the petition documents, and the hours when the documents can be reviewed.

3 AAC 110.470. Proof of notice and service

No later than 50 days after receipt of the department's written notice of acceptance of the petition for filing, the petitioner shall deliver to the department five additional complete sets of petition documents and an affidavit that the notice, posting, service, deposit, and publishing requirements of 3 AAC 110.450 - 3 AAC 110.460 have been satisfied. Copies of the petition documents, including maps and other exhibits, must conform to the originals in color, size, and other distinguishing characteristics.

3 AAC 110.480. Responsive briefs and written comments

(a) If an interested person or entity seeks to participate as a respondent to a petition, that person or entity must have the capacity to sue and be sued, and must file with the department an original and five complete copies of a responsive brief containing facts and analyses favorable or adverse to the petition. If the respondent is a group, the group shall designate one person to represent the group. Copies of the responsive briefs, including maps and other exhibits, must conform to the original in color, size, and other distinguishing characteristics. The respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(b) The responsive brief, and any companion exhibits, must be filed with an affidavit by the respondent that, to the best of the respondent's knowledge, information, and belief, formed after reasonable inquiry, the responsive brief and exhibits are founded in fact and are not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(c) A responsive brief must be received by the department in a timely manner in accordance with 3 AAC 110.640. A responsive brief must be accompanied by an affidavit of service of two copies of the brief on the petitioner by regular mail, postage prepaid, or by hand-delivery.

(d) An interested person or entity may file with the department written comments supporting or opposing the petition. Upon receiving those comments, the department shall provide promptly a copy of the written comments to the petitioner by hand-delivery, electronic mail, facsimile, or postage-prepaid mail. If the written comments, including attachments, exceed 20 pages or if they include colored materials or materials larger than 11 inches by 17 inches, the correspondent shall provide an additional five complete sets of the written comments to the department. Copies of the written comments, including attachments, must conform to the original

in color, size, and other distinguishing characteristics. Written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

3 AAC 110.490. Reply brief

The petitioner may file an original and five copies of a single reply brief in response to all responsive briefs and written comments filed timely under 3 AAC 110.480. The petitioner shall provide the department with a copy of the reply brief in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. The reply brief must be received by the department in a timely manner in compliance with 3 AAC 110.640. The reply brief must be accompanied by an affidavit of service of the brief on all respondents by regular mail, postage prepaid, or by hand-delivery.

3 AAC 110.500. Limitations on advocacy

(a) Unless otherwise ordered by the commission, for good cause shown, the commission will not, and the department may not, accept a document, letter, or brief for filing and consideration except in accordance with the procedures, timeframes, hearings, and meetings specified in 3 AAC 110.400 - 3 AAC 110.660.

(b) A member of the commission is prohibited from ex parte contact and communication with any person except the staff of the commission, concerning a matter pending before the commission that has been filed as a petition, from the date the petition was first submitted to the department through the last date on which the petition may be subject to action by the commission, including the last date of proceedings of the commission ordered by a court of competent jurisdiction.

3 AAC 110.510. Informational sessions

(a) If the department determines that persons or entities within or near the area of the proposed change have not had adequate opportunity to be informed about the scope, benefits and detriments of the proposed change, the department shall require the petitioner to conduct informational sessions, and to submit a recording, transcription, or summary of those sessions to the department.

(b) The department may not proceed with the processing of the petition until the petitioner has certified, by affidavit, that the informational session requirements of this section have been met.

3 AAC 110.520. Departmental public meetings

(a) During its investigation and analysis of a petition for incorporation, the department shall convene at least one public meeting in the territory proposed for incorporation. During its investigation and analysis of a petition for a change other than incorporation, the department may convene at least one public meeting in or near the territory proposed for change.

(b) Notice of the date, time and place of the public meeting under (a) of this section must be mailed, postage prepaid, to the petitioner and to each respondent at least 15 days before the public meeting. The department shall publish the notice at least once each week, for two consecutive weeks, immediately preceding the date of the meeting, in a newspaper of general circulation selected by the department to reach the people and entities within or near the area of the proposed change. If the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the area of the proposed change, the department shall provide notice through other means designed to reach the public. The petitioner shall post notice of the meeting in at least three prominent locations readily accessible to the public in or near the territory proposed for change, and at the same location where the petition documents are available for review, for at least 14 days immediately preceding the date of the meeting. On or before the date of the public meeting, the petitioner shall submit to the department an affidavit certifying that the posting requirements of this subsection have been met.

(c) Staff assigned to the commission shall preside at the public meeting. If the public meeting is held within the time period established under 3 AAC 110.640 for receiving written comments, the presiding staff person shall accept written materials submitted at the public

meeting. However, except in extraordinary circumstances, the petitioner and the respondents may not submit further written materials at the meeting. The public meeting shall be recorded and summarized in the report with recommendations of the department prepared under 3 AAC 110.530.

(d) The department may postpone the time or relocate the place of the public meeting by conspicuously posting notice of the postponement or relocation at the original time and location of the public meeting, if the meeting is relocated within the same community or territory, and is rescheduled no more than 72 hours after the originally scheduled time.

3 AAC 110.530. Departmental report

(a) The department shall investigate and analyze a petition filed with the department under this chapter, and shall submit to the commission a written report of its findings with recommendations regarding the petition.

(b) The department shall mail to the petitioner and respondents its preliminary report with recommendations before submitting its final report with recommendations to the commission. Within 24 hours after receipt of the preliminary report with recommendations, the petitioner shall place a copy of the report with the petition documents available for review.

(c) The petitioner, respondents, and other interested persons may submit to the department written comments pertaining directly to the preliminary report with recommendations. The written comments must be received by the department in a timely manner in accordance with 3 AAC 110.640.

(d) In its final written report with recommendations, the department shall consider timely submitted written comments addressing the preliminary report with recommendations.

3 AAC 110.540. Amendments and withdrawal

(a) A petitioner may amend or withdraw the original petition at any time before the first mailing, publishing, or posting of notice of the commission's hearing on the petition under 3 AAC 110.550. The original and five copies of the amendment or withdrawal must be filed with the department. The petitioner shall provide the department with a copy of the amended petition and supporting materials in an electronic format, unless the department waives this requirement because the petitioner lacks a readily accessible means or the capability to provide items in an electronic format. If voters initiated the original petition,

(1) the amended petition must contain the dated signatures of the same number of voters required by AS 29.04, AS 29.05, AS 29.06, or this chapter for the original petition, and must include the dated signatures of at least a majority of the same voters who signed the original petition; and

(2) a statement withdrawing a petition must contain the dated signatures of at least 30 percent of the voters residing in the area of the proposed change, and must include at least a majority of the same voters who signed the original petition.

(b) A petitioner shall serve the amended petition on each person and entity designated by the department, and by 3 AAC 110.400 - 3 AAC 110.660 to receive the original petition, and on the respondents to the original petition. A petitioner shall place a copy of the amended petition with the original petition documents, post the public notice of the amended petition, and submit an affidavit of service and notice in the same manner required for the original petition.

(c) The chair of the commission may determine whether the amendment is significant enough to warrant an informational session, opportunity for further responsive briefing, an additional public meeting by the department, or a repeat of any other step or process specified in 3 AAC 110.400 - 3 AAC 110.660. Additional informational sessions, meetings, briefings, or other steps or processes will be conducted in accordance with the procedures specified in 3 AAC 110.400 - 3 AAC 110.660 for the processing of the original petition, except that the chair of the commission may shorten the timing.

(d) A petitioner may not amend or withdraw the original petition after the first mailing, publishing, or posting of notice of the commission's hearing on the petition, except upon a clear showing to the commission that the public interest of the state and of the persons and entities within or near the area of the proposed change is best served by allowing the proposed amendment or withdrawal.

3 AAC 110.550. Commission public hearing

(a) The commission will convene one or more public hearings at convenient locations in or near the territory of the proposed change as required under AS 29.04, AS 29.05, AS 29.06, AS 44.33.810 - 44.33.828, and this chapter.

(b) Notice of the date, time, place and subject of the hearing shall be

(1) mailed, postage prepaid, by the department to the petitioner and to each respondent;

(2) published by the department at least three times, with the first date of publishing occurring at least 30 days before the date of the hearing, in a display ad format no less than three inches long by two columns wide, in one or more newspapers of general circulation selected by the department to reach the people in the territory; if the department determines that a newspaper of general circulation, with publication at least once a week, does not circulate in the territory, the department shall provide notice through other means designed to reach the public; and

(3) posted by the petitioner in at least three prominent locations readily accessible to the public in the area in which the hearing is to be held, and where the petition documents are available for review, for at least 21 days preceding the date of the hearing.

(c) The department shall submit a request for a public service announcement of the hearing notice required under this section to at least one radio or television station serving the area of the proposed change and request that it be announced during the 21 days preceding the date of the hearing.

(d) The commission may postpone the time or relocate the place of the hearing by conspicuously posting notice of the postponement or relocation at the original time and location of the public hearing, if the hearing is relocated within the same community or territory and is rescheduled no more than 72 hours after the originally scheduled time.

(e) At least 14 days before the hearing, the petitioner and each respondent shall submit to the department a list of witnesses that the respective party intends to call to provide sworn testimony. The list must include the name and qualifications of each witness, the subjects about which each witness will testify, and the estimated time anticipated for the testimony of each witness. On the same date that the petitioner submits its witness list to the department, the petitioner shall provide a copy of its witness list to each respondent by hand-delivery or postage-prepaid mail. On the same date that a respondent submits its witness list to the department, the respondent shall provide a copy of its witness list to the petitioner and to all other respondents by hand-delivery or postage-prepaid mail.

3 AAC 110.560. Commission hearing procedures

(a) The chair of the commission shall preside at the hearing, and shall regulate the time and the content of statements, testimony, and comments to exclude irrelevant or repetitious statements, testimony, and comments. The department shall record the hearing and preserve the recording. Two members of the commission constitute a quorum for purposes of a hearing under this section.

(b) As part of the hearing, the commission may include

(1) a report with recommendations from the department;

(2) an opening statement by the petitioner, not to exceed 10 minutes;

(3) an opening statement by each respondent, not to exceed 10 minutes;

(4) sworn testimony of witnesses

(A) with expertise in matters relevant to the proposed change; and

(B) called by the petitioner;

(5) sworn testimony of witnesses

(A) with expertise in matters relevant to the proposed change; and

(B) called by each respondent;

(6) sworn responsive testimony of witnesses

(A) with expertise in matters relevant to the proposed change; and

(B) called by the petitioner;

(7) a period of public comment by interested persons, not to exceed three minutes for each person;

(8) a closing statement by the petitioner, not to exceed 10 minutes;

(9) a closing statement by each respondent, not to exceed 10 minutes; and

(10) a reply by the petitioner, not to exceed five minutes.

(c) If more than one respondent participates, the chair of the commission, at least 14 days before the hearing, may establish for each respondent time limits on the opening and closing statements that are lower than those time limits set out in (b) of this section.

(d) A member of the commission may question a person appearing for public comment or as a sworn witness. The commission may call additional witnesses.

(e) A brief or document may not be filed at the time of the public hearing unless the commission determines that good cause exists for that evidence not being presented in a timely manner for written response by the petitioner or respondents, and for consideration in the reports with recommendations of the department.

(f) The commission may amend the order of proceedings and change allotted times for presentations if amendment of the agenda will promote efficiency without detracting from the commission's ability to make an informed decision.

3 AAC 110.570. Decisional meeting

(a) Within 90 days after the last commission hearing on a proposed change, the commission will convene a decisional meeting to examine the written briefs, exhibits, comments, and testimony, and to reach a decision regarding the proposed change. The commission will not receive new evidence, testimony, or briefing during the decisional meeting. However, the chair of the commission may ask the department or a person for a point of information or clarification.

(b) Three members of the commission constitute a quorum for the conduct of business at a decisional meeting.

(c) If the commission determines that a proposed change must be altered to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission may alter the proposed change and accept the petition as altered. If the commission determines that a precondition must be satisfied before the proposed change can take effect, the commission will include that precondition in its decision. A motion to alter, impose preconditions upon, or approve a proposed change requires at least three affirmative votes by commission members to constitute approval.

(d) If the commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, or this chapter, the commission will reject the proposed change. If a motion to grant a proposed change receives fewer than three affirmative votes by commission members, the proposed change is rejected.

(e) The commission will keep written minutes of a decisional meeting. Each vote taken by the commission will be entered in the minutes. The approved minutes are a public record.

(f) Within 30 days after the date of its decision, the commission will file as a public record a written statement explaining all major considerations leading to the decision. A copy of the statement will be mailed to the petitioner, respondents, and other interested persons requesting a copy. The department shall execute and file an affidavit of mailing as a part of the public record of the proceedings.

(g) Unless reconsideration is requested timely under 3 AAC 110.580 or the commission, on its own motion, orders reconsideration under 3 AAC 110.580, a decision by the commission is final on the day that the written statement of decision is mailed, postage prepaid to the petitioners and the respondents.

3 AAC 110.580. Reconsideration

(a) Within 18 days after a written statement of decision is mailed under 3 AAC 110.570(f), a person or entity may file an original and five copies of a request for reconsideration of all or part of that decision, describing in detail the facts and analyses that support the request for reconsideration.

(b) Within 20 days after a written statement of decision is mailed under 3 AAC 110.570(f), the commission may, on its own motion, order reconsideration of all or part of that decision.

(c) A person or entity filing a request for reconsideration shall provide the department with a copy of the request for reconsideration and supporting materials in an electronic format, unless the department waives this requirement because the person or entity requesting reconsideration lacks a readily accessible means or the capability to provide items in an electronic format. A request for reconsideration must be filed with an affidavit of service of the request for reconsideration on the petitioner and each respondent by regular mail, postage prepaid, or by hand-delivery. A request for reconsideration must also be filed with an affidavit that, to the best of the affiant's knowledge, information, and belief, formed after reasonable inquiry, the request for reconsideration is founded in fact, and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

(d) If the person or entity filing the request for reconsideration is a group, the request must identify a representative of the group.

(e) The commission will grant a request for reconsideration or, on its own motion, order reconsideration of a decision if the commission determines that

(1) a substantial procedural error occurred in the original proceeding;

(2) the original vote was based on fraud or misrepresentation;

(3) the commission failed to address a material issue of fact or a controlling principle of law; or

(4) new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

(f) If the commission does not act on a request for reconsideration within 20 days after the decision was mailed under 3 AAC 110.570(f), the request is automatically denied. If it orders reconsideration or grants a request for reconsideration within 20 days after the decision was mailed under 3 AAC 110.570(f), the commission will allow a petitioner or respondent 10 days after the date reconsideration is ordered or the request for reconsideration is granted to file an original and five copies of a responsive brief describing in detail the facts and analyses that support or oppose the decision being reconsidered. The petitioner or respondent shall provide the department with a copy of the responsive brief in an electronic format, unless the department waives this requirement because the petitioner or respondent lacks a readily accessible means or the capability to provide items in an electronic format.

(g) Within 90 days after the department receives timely filed responsive briefs, the commission, by means of the decisional meeting procedure set out in 3 AAC 110.570(a) - (f), will issue a decision on reconsideration. A decision on reconsideration by the commission is final on the day that the written statement of decision is mailed, postage prepaid, to the petitioner and the respondents.

3 AAC 110.590. Certain local action annexations

(a) Except as otherwise provided in this section, if a petition is filed with the department under a local action method provided for in AS 29.06.040 (c)(2) or (c)(3) for annexation of adjacent municipally owned property or adjacent property by unanimous consent of voters and property owners, only the following procedures specified in 3 AAC 110.400 - 3 AAC 110.660 are required:

(1) filing a petition under 3 AAC 110.420;

(2) technical review of the petition under 3 AAC 110.440;

(3) notice and service of the petition under 3 AAC 110.450 - 3 AAC 110.470;

(4) responsive briefs and comments under 3 AAC 110.480, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of responsive briefs and comments to 14 days from the date of first publication of the notice of filing of the petition;

(5) a reply brief under 3 AAC 110.490, except that the chair of the commission may limit the time allowed under 3 AAC 110.640 for the filing of a reply brief to seven days from the date that the petitioner received the responsive brief;

(6) a departmental report under 3 AAC 110.530, except that the department shall issue only one report concerning the local action annexation proposal at least 21 days before the

public hearing under 3 AAC 110.550; interested persons may submit written comments to the department on its report no later than seven days before the public hearing;

(7) the commission's public hearing under 3 AAC 110.550, except that the commission may conduct the hearing by teleconference;

(8) the decisional meeting under 3 AAC 110.570;

(9) reconsideration under 3 AAC 110.580.

(b) The commission may expand local action procedures for annexations under (a) of this section, so that those procedures include other requirements of 3 AAC 110.400 - 3 AAC 110.660, such as informational sessions, and public meetings and hearings, if the commission determines that the best interests of the state will be enhanced.

(c) The commission may relax, reduce, or eliminate the notice and service requirements of 3 AAC 110.450 - 3 AAC 110.470 if the commission determines that a shortened or less expensive method of public notice is reasonably designed to reach all interested persons.

(d) Repealed 5/19/2002.

(e) If the commission determines that the balanced best interests of the locality and the state are enhanced by statewide participation, the commission may convert a local action petition for an annexation described in (a) of this section to a legislative review petition.

3 AAC 110.600. Local action/local option elections

(a) In accordance with AS 29.04, AS 29.05, and AS 29.06, the commission will notify the director of elections of its acceptance of a local action or local option petition proposing city reclassification under AS 29.04, municipal incorporation under AS 29.05, and municipal dissolution, merger, or consolidation under AS 29.06.

(b) If AS 29.06.040 requires a municipal election for a proposed annexation or detachment, the commission will notify the clerk of the municipality proposed for change of the commission's acceptance of a local action petition. The election must be administered by the municipality proposed for change at the municipality's own cost, and in the manner prescribed by its municipal election ordinances, except that the commission may specify the wording of the ballot measure and broaden the election notice requirements.

(c) Under AS 29.06.040 (c) and AS 44.33.812 (a)(2), the commission may approve a petition for annexation subject only to approval by a majority of the aggregate voters who vote on the question within the area proposed for annexation and the annexing municipality. If the territory proposed for annexation is uninhabited, the commission may approve a petition for annexation of that territory subject only to approval by a majority of the voters who vote on the question within the annexing municipality.

3 AAC 110.610. Legislative review

(a) The commission may determine during the course of proceedings that a legislative review petition must be amended and considered as a local action or local option petition, if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

(b) If a decision of the commission requires legislative review, the commission will present a recommendation for the decision to the legislature during the first 10 days of a regular session in accordance with art. X, sec. 12, Constitution of the State of Alaska.

3 AAC 110.620. Judicial review

A final decision of the commission made under AS 29.04, AS 29.05, AS 29.06, or this chapter may be appealed to the superior court in accordance with the Administrative Procedure Act (AS 44.62).

3 AAC 110.630. Effective date and certification

(a) Except as provided in (b) or (c) of this section, a final decision of the commission is effective when

(1) notification of compliance with 42 U.S.C. 1973c (Voting Rights Act of 1965) is received from the United States Department of Justice;

(2) certification of the legally required voter approval of the commission's final decision is received from the director of elections or the appropriate municipal official; and

(3) 45 days have passed since presentation of the commission's final decision on a legislative review petition was made to the legislature and the legislature has not disapproved the decision.

(b) The effective date of a merger or consolidation is the date set by the director of elections for the election of officials of the remaining or new municipality, if the provisions of (a) of this section have also been satisfied.

(c) The commission may defer the effective date of a city reclassification under AS 29.04, municipal incorporation under AS 29.05, or municipal annexation, detachment, merger, consolidation, or dissolution under AS 29.06 for a period of no more than two years.

(d) When the requirements in (a) of this section have been met, the department shall issue a certificate describing the effective change. The department shall hand-deliver or mail, postage prepaid, a copy of the certificate to the municipality that has been changed, and shall file a copy of the certificate in each recording district of all territory within the municipality that has been changed.

3 AAC 110.640. Scheduling

(a) The chair of the commission shall set or amend the schedule for action on a petition.

(b) In a schedule under (a) of this section, and except as provided by 3 AAC 110.590 for certain local action annexations, the chair of the commission shall allow at least

(1) 49 days after the date of initial publication or posting of notice of the filing of a petition, whichever occurs first, for receipt by the department of a responsive brief or written comments concerning the petition;

(2) 14 days after the date of service of a responsive brief on the petitioner for the receipt by the department of a reply brief from the petitioner;

(3) 28 days after the date of mailing of a departmental preliminary report with recommendations to the petitioner for receipt of written summary comments to the department; and

(4) 21 days between the date of mailing of a final report with recommendations by the department to the petitioner and the commission hearing on the petition.

(c) The commission may postpone proceedings on a petition that has been accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all of the same territory and that has either been accepted for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated competing petition only if the anticipated competing petition is received by the department no later than 90 days after the date of the first publication of notice of the earlier petition under 3 AAC 110.450.

3 AAC 110.650. Resubmittals and reversals

Except upon a special showing to the commission of significantly changed conditions, a petition will not be accepted for filing that

(1) is substantially similar to a petition denied by the commission, rejected by the legislature, or rejected by the voters during the immediately preceding 24 months; or

(2) requests a substantial reversal of a decision of the commission that first became effective during the immediately preceding 24 months.

3 AAC 110.660. Purpose of procedural regulations; relaxation or suspension of procedural regulation

The purpose of the procedural requirements set out in 3 AAC 110.400 - 3 AAC 110.660 is to facilitate the business of the commission, and will be construed to secure the reasonable, speedy, and inexpensive determination of every action and proceeding. Unless a requirement is strictly provided for in the Constitution of the State of Alaska, AS 29, or AS 44.33.810 - 44.33.849, the commission may relax or suspend a procedural regulation if the commission determines that a strict adherence to the regulation would work injustice, would result in a substantially uninformed decision, or would not serve relevant constitutional principles and the broad public interest.

PART IX – OBSERVATIONS REGARDING THE RESULTS OF THE JULY 17, 2001 KETCHIKAN CONSOLIDATION ELECTION

BOROUGH-WIDE, VOTERS REJECTED THE 2001 CONSOLIDATION PROPOSAL BY A NEAR LANDSLIDE:

- A majority of the total votes cast throughout the Borough was required for approval of the consolidation proposition; the Borough-wide tally is the only one that mattered.
- Borough-wide, 1,642 voters favored the 2001 consolidation proposal; 2,273 voters opposed it.
- Borough-wide, 631 more voters opposed consolidation than favored it.
- The Center for Voting and Democracy defines a landslide as an election that is decided by a margin of at least 20 percentage points. The 2001 consolidation proposal was favored by 41.9% of the voters Borough-wide and was opposed by 58.1% of the voters Borough-wide. The margin of defeat was 16.2 percentage points (four-fifths of a landslide).

KETCHIKAN CITY VOTERS APPROVED THE 2001 CONSOLIDATION BY A HUGE LANDSLIDE

- Voters within the City of Ketchikan favored consolidation by a margin of 1,205 to 632.
- The 2001 consolidation proposal was favored by 65.6% of the voters within the City of Ketchikan and was opposed by 34.4% of the voters within the City of Ketchikan. The margin of approval within the City of Ketchikan was 31.2 percentage points (a large landslide).
- Within the City of Ketchikan, 573 more voters favored consolidation than opposed it.

BOROUGH VOTERS OUTSIDE THE CITY OF KETCHIKAN OPPOSED THE 2001 CONSOLIDATION PROPOSAL BY A THREE-FOLD-LANDSLIDE

- Voters in that portion of the Borough outside the City of Ketchikan opposed consolidation by a margin of 1,641 to 437.
- The 2001 consolidation proposal was rejected by 79.0% of the votes cast in that portion of the Borough outside the City of Ketchikan; only 21.0% endorsed it. The margin of rejection within the area of the Borough outside the City of Ketchikan was 58.0 percentage points (a massive landslide).
- Within that portion of the Borough outside the City of Ketchikan, 1,204 more voters opposed consolidation than favored it.

VOTER TURNOUT IN THE CITY OF KETCHIKAN WAS MODERATE COMPARED TO REMAINDER OF THE BOROUGH

- Fewer than three out of every 10 registered voters of the City of Ketchikan participated in the 2001 consolidation election (1,837 voters or 29.9% of the 6,150 voters currently registered).
- Slightly more than five out of every 10 registered voters of the Borough outside the City of Ketchikan participated in the 2001 consolidation election (2,078 voters or 50.3% of the 4,131 voters currently registered).
- Proportion of voter turnout outside the City of Ketchikan was 68 percent higher than it was inside the City of Ketchikan.

PART X – OBSERVATIONS REGARDING THE RESULTS OF THE OCTOBER 7, 2003 INITIATIVE TO PETITION FOR CONSOLIDATION

BOROUGH-WIDE, VOTERS APPROVED THE INITIATIVE BY 10 PERCENTAGE POINTS:

- Borough-wide, 1,796 voters favored the initiative; 1,498 voters opposed it.
- Borough-wide, 298 more voters favored the initiative than opposed it.
- The initiative was favored by 54.5% of the voters Borough-wide and was opposed by 45.5% of the voters Borough-wide. The margin of approval was 10.0 percentage points (half of a landslide).

KETCHIKAN CITY VOTERS APPROVED THE 2003 CONSOLIDATION INITIATIVE BY ROUGHLY THE SAME MARGIN AS THE 2001 CONSOLIDATION PROPOSAL

- Voters within the City of Ketchikan favored the consolidation initiative by a margin of 985 to 540.
- The 2003 consolidation initiative was favored by 64.6% of the voters within the City of Ketchikan and was opposed by 35.4% of the voters within the City of Ketchikan.
- The margin of approval within the City of Ketchikan was 29.2 percentage points (compared to a 31.2 percentage point margin of victory in the 2001 election).
- Within the City of Ketchikan, 445 more voters favored the initiative than opposed it.
- Figures do not include absentee and questioned ballots, which are not reported by precinct. Borough-wide, absentee voters endorsed the initiative by a margin of 193 to 158; voters casting questioned ballots favored it by a margin of 80 to 65.

BOROUGH VOTERS OUTSIDE THE CITY OF KETCHIKAN OPPOSED THE INITIATIVE, BUT BY A MARGIN FAR SMALLER THAN THE 2001 CONSOLIDATION PROPOSAL

- Voters in that portion of the Borough outside the City of Ketchikan opposed consolidation by a margin of 735 to 538.
- The initiative was rejected by 57.7% of the votes cast in that portion of the Borough outside the City of Ketchikan; 42.3% endorsed it.
- The margin of rejection within the area of the Borough outside the City of Ketchikan was 15.4 percentage points (compared to a 58.0 percentage point margin of defeat of the 2001 consolidation proposition).
- Within that portion of the Borough outside the City of Ketchikan, 197 more voters opposed the initiative than favored it.
- Figures do not include absentee and questioned ballots, which are not reported by precinct. Borough-wide, absentee voters endorsed the initiative by a margin of 193 to 158; voters casting questioned ballots favored it by a margin of 80 to 65.

VOTER TURNOUT IN THE CITY OF KETCHIKAN WAS MODERATE COMPARED TO REMAINDER OF THE BOROUGH

- Three out of every 10 registered voters of the City of Ketchikan participated in the 2003 regular municipal election (1,848 voters or 30.0% of the 6,150 voters currently registered).
- Less than four out of every 10 registered voters of the Borough outside the City of Ketchikan participated in the 2003 municipal election (1,551 voters or 37.5% of the 4,131 voters currently registered).
- Proportion of voter turnout outside the City of Ketchikan was 25 percent higher than it was inside the City of Ketchikan.

PART XI – PENDING LEGISLATION REGARDING CONSOLIDATION ISSUES

Currently, there are two bills before the Legislature that address consolidation issues:

HB 38: This bill relates to mergers and consolidation of municipalities. A copy of the bill is attached.

Section 1 of the bill imposes a requirement that signatures on a voter-initiated local option petition or merger or consolidation of municipal governments must be gathered within a 365-day period. Currently, there is no limit on the time frame for gathering votes.

Section 2 adds a new subsection to AS 29.06.100 dealing with a local option petition for merger or consolidation of a borough and more than one city within that borough. It requires the petition to propose one of two results if it is approved by voters in the borough area outside the cities proposed to be merged or consolidated but is not approved by voters in each of the cities. The two options are: (1) the entire proposal is defeated, or (2) the proposal is partially approved and the borough is merged or consolidated with the cities in which the proposal has been approved.

Section 3 amends existing law. It requires that a majority of the votes in each of the municipalities proposed to be merged or consolidated through the local option process must favor merger or consolidation in order for it to be approved..

Votes on a proposal to merge or consolidate a borough and one or more cities within that borough must be tabulated as follows:

(1) in the borough area outside of each city in that borough proposed to be merged or consolidated, and

(2) in each of the cities in the borough proposed to be merged or consolidated.

If one or more municipalities outside of the borough are also included within the proposal, in each of those other municipalities a separate tabulation must be made for that area.

The bill provides that the proposal is defeated if it is not separately approved in the borough outside of the cities in that borough that are proposed to be merged or consolidated. If municipalities

outside of the borough are included in the proposal, it is also rejected if not approved in those other municipalities.

If the proposal is not approved in one or more of the cities within the borough that are proposed to be merged or consolidated but is otherwise approved in each of the areas separately tabulated, the proposal is either entirely defeated or partially approved as specified in the petition under the new provision set out in Section 2.

Lastly, Section 3 states that the provisions in the amended law are intended to be consistent with the voting requirements for annexation specified in AS 29.06.040(c)(1).

Section 4 provides that the provisions in Section 2 do not apply to a merger or consolidation petition filed with DCED before the effective date of the Act. The bill also provides that the provisions in Section 3 do not apply to an election held as a result of a petition filed with DCED prior to the effective date of the Act.

HB 38 is identical to a bill (SCS CSHB 296(JUD)) passed by the 2002 Legislature. That bill was opposed by the DCED, the LBC, and vetoed by the Governor. A copy of the various documents analyzing and opposing the bill are attached.

Among other things, the DCED and LBC, observed that current law – which has been in place for thirty years – provides that local option consolidation or mergers are subject to approval by a simple majority vote in the area proposed for consolidation or merger.

The bill severely altered that long-established provision. It created separate *de facto* voting districts for each affected city as well as for the noncity area.

It weighted the votes of residents of small districts more heavily than votes of residents of populous districts. For example, voters in the City of Kupreanof could block a merger or consolidation with the adjoining City of Petersburg even though Kupreanof voters would constitute less than ½ of 1 percent of the total voters.

No matter how large or small in population, each district would have had the power to veto a local option consolidation or merger. As such, the bill disregarded the will of the majority about their preferred form of local government.

Concern also existed over apparent contradictory elements in the bill. The last sentence of Section 3 of the bill stated that the provisions of the bill were “intended to be consistent with the voting requirements for annexation specified in AS 29.06.040(c)(1).”

However, there is nothing in the referenced statute that provides for *de facto* voting districts. Indeed, the statute provides for the exact opposite – approval of a local option annexation by a simple majority of the votes in the affected area.

Further, the changes proposed by the bill constituted a major departure from constitutional principles and from long-established legislative policy.

Article X, Section 1 of Alaska’s constitution provides for “a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.” The proposed amendment would have perpetuated inefficient, inequitable, and ineffective local government structures resulting in duplication of government units and tax-levying jurisdictions, regardless of the will of the majority of local voters.

For over 30 years, legislative policy has allowed consolidation or merger proposals to be decided by a majority vote of affected residents. That policy is in harmony with constitutional principles to encourage efficiency and fiscal accountability in local government. The proposed amendments would have reversed that legislative policy and hindered the natural progression of municipal government in Alaska..

HB 38 is identical to the legislation vetoed as SCS CSHB 296(JUD).

HB 363: Except for some minor wordsmithing, this bill is the same as HB 38 (and, thus, SCS CSHB 296(JUD)).